



Development Tribunal – Decision Notice

Planning Act 2016, section 255

Appeal Number:	22-030
Appellant:	Mr Adrian Anderiesz
Respondent: (Assessment Manager)	Mr Trevor Gerhardt, Building Certifier, Sunshine Coast Building Approvals
Co-Respondent:	Sunshine Coast Regional Council
Site Address:	22 Rapanea Street, Meridan Plains and described as Lot 320 on SP 201541 – the subject site

Appeal

Appeal under the *Planning Act 2016*, Section 229(1)(a)(i) and Schedule 1, Section 1, Table 1, Item (1)(a), against the assessment manager's decision to refuse the preliminary approval after receiving a Generally in Accordance Request response from the Sunshine Coast Council regarding the construction for a Class 10a shed at the subject site.

Date and time of hearing:	29 August 2022 at 9.30am
Place of hearing:	The subject site
Tribunal:	Dr. Christopher Robertson – Chair Ms. Catherine Brouwer – Member
Present:	Mr. Adrian Anderiesz – Appellant Mr Trevor Gerhardt – Assessment Manager, Sunshine Coast Building Approvals Mr Angus McKinnon – Sunshine Coast Building Approvals Ms. Julie Edwards – Sunshine Coast Council Representative

Decision:

The Development Tribunal (Tribunal), in accordance with Section 254(2)(a) of the *Planning Act 2016* (PA) confirms the decision of the Assessment Manager to refuse the preliminary approval for building works.

Background

1. The subject site is encumbered by a current registered covenant (Covenant No: 711263703, Registered 12 December 2007) on the title deed (as an outcome of a negotiated decision over the development (Negotiated decision notice, dated: 1 June 2005)). This covenant was intended to apply across lots 318-333 SP 201541.

2. The covenant is for an agricultural buffer zone which extends across the width of the entire subject site and 30m from the western boundary within the site, incorporating a 20m wide vegetated zone measured from the western boundary. Among other conditions the covenant requires Council approval for construction of any buildings within the buffer zone.
3. Project BA sought advice from Sunshine Coast Council (Council) regarding the construction of a Class 10a gabled steel shed of 9.00m (depth) x16.00m (width) x4.20m (height, with gable reaching 5.41m at its peak) within the buffer zone.
4. A Generally in Accordance response was provided by the Sunshine Coast Council (25 May 2022), citing the following:
 - a) The submitted plans are contrary to the explicit provisions of Kawana Waters Master Plans Numbers 1, 27 and 28 regarding an agriculture buffer to the adjacent rural land.
 - b) The submitted plans are contrary to the intent of the current planning scheme. The submitted plans contravene the terms of the statutory covenant that is currently registered over the lot.
 - c) The future use of the adjacent rural land has not yet been finally established by Council. This will not occur until the release of the draft new planning scheme establishes the future zoning direction of the rural land.
 - d) Council is opposed to granting lawful vehicular access to the unsealed section of Meridan Way.
 - e) If the zoning of the adjacent rural land is changed in future, Master Plan No. 28 and the Reconfiguration of a Lot approval would need to be changed, and the statutory covenant removed, before structures (such as the proposed shed) could be permitted within the agricultural buffer area.
5. The Appellant has raised the following points in response to the Council with regard to this Appeal:
 - a) The property owners require the shed to provide covering and security to their motor vehicles and personal effects.
 - b) The property does not have a suitable side access or an alternative location other than at the rear of the property due to the location of the existing dwelling and existing swimming pool.
 - c) The proposed shed will use a colour scheme and materials that blend into the property and neighbouring properties.
 - d) The proposed shed does not dominate the streetscape.
 - e) The property owner is happy to provide additional landscaping to soften the streetscape and enhance the landscape elements of the property.
 - f) The Sunshine Coast Council email from Robyn Douglas dated Thursday 5 May 2022, which highlights the stage the Council is at with their proposed planning changes for the area.

Material Considered

The material considered in arriving at this decision comprises:

1. 'Form 10 – Appeal Notice', grounds for appeal and correspondence accompanying the appeal lodged with the Tribunals Registrar 24 June 2022.
2. Email to Mr. Scott McKay from Robyn Douglas, Coordinator Open Space and Social Policy, Environment and Sustainability Policy Livability and Natural Assets Group, Sunshine Coast Council. Dated, 5 May, 2022.
3. Decision Notice by Sunshine Coast Building Approvals, signed by Mr. Trevor Gerhardt, Building Certifier, Sunshine Coast Building Approvals. Undated.

4. Correspondence from Sunshine Coast Council, Mr. Stefan Martin, to Project BA, concerning the proposal on the subject site, dated, 25 May, 2022.
5. Caloundra City Council, *Master Plan No.1 (Detailed Planning Area 10) 2002*. approved 8 August, 2002.
6. Caloundra City Council, *Master Plan No.27 (Precinct/Estate Plan - Detailed Planning Area 10) 2002*. Approved 27 March 2003.
7. Caloundra City Council, *Master Plan No. 28 (Site and Development Plan - Detailed Planning Area 10 - Land Use Area Residential 1) 2002*. Approved 27 March 2003.
8. Caloundra City Council, Correspondence – “Negotiated decision notice,” to Stockland Kawana Waters Pty Ltd. 1 June, 2006.
9. Caloundra City Council, *Code Assessment Forms - Change to Development Approval*. “File No: 2007/55-00013.” 12 April, 2007.
10. Caloundra City Council, Approved Plan Kawana Forest. 24 July 2006.
11. "Proposed Re-configuration - Stages 5-9, Kawana Forest Cancelling Part of Lot 702 on SP167680 and Lot 5 SP136737." "Stamped Caloundra City Council, DA NO: 2005/352-00041 approved on 9 December, 2005."
12. Dept of Natural Resources and Mines, Qld. Registration of Agricultural Buffer Covenant. Lodger - Sunshine Coast Regional Council. Lodgement no: 3317908. 7 August, 2013.
13. Sunshine Coast Council. *Development Control Plan 1. Kawana Waters*. Gazetted 13 December 1996. Amended 19 October, 2018.
14. Sunshine Coast Council. *Geohub Map*. Rapanea Street and Surrounding Environs. 24 August, 2022.
15. Sunshine Coast Council. *Sunshine Coast Council, Planning Scheme 2014. Amended 3 July 2017*. “7.2.14 Kawana Waters Local Plan Code.”
16. Email communication from Sunshine Coast Building Approvals to the Tribunal Register. Dated 30 August, 2022.
17. Email communication from Sunshine Coast Building Approvals to the Tribunal Register. Dated 2 September, 2022.
18. Email communication from Sunshine Coast Council to the Tribunal Register. Dated 1 September, 2022.
19. Email communication from Sunshine Coast Council to the Tribunal Register. Dated 30 August, 2022.
20. Covenant Dealing. Document No: 711263703. Dated: 23 November, 2007.
21. Current Title Search, Queensland Titles Registry. Dated 1 September, 2022. Lot 320 SP 201541.

22. Site Plan showing shed siting modified to have 4.5m setback from the north boundary, 1.5m from the south boundary, and the same 1.5m setback from the west boundary. Undated - Received at the Tribunal hearing 29 August 2022.
23. A File Note of Sunshine Coast Building Approvals which is a record of a phone call of 13 June 2022 between Stephanie of Sunshine Coast Building Approvals and Stefan Martin of Sunshine Coast Council. Received at the Tribunal hearing 29 August 2022.

Findings of Fact

The Tribunal makes the following findings of fact:

1. The title of the subject site has a current applicable registered covenant (No: 711263703. Registered 12 December, 2007), applying an agricultural buffer zone.
2. A number of available sources disclose that the Sunshine Coast Council, and its previous local government body, the Caloundra City Council, over an extended period had clear intent to apply the agricultural buffer zone. The sources that acknowledge this include:
 - a) The Sunshine Coast Council. *Geohub Map*. (24 August, 2022).
 - b) Caloundra City Council, *Master Plan No.1 (Detailed Planning Area 10) 2002*.
 - c) Caloundra City Council, *Master Plan No.27 (Precinct/Estate Plan - Detailed Planning Area 10) 2002*.
 - d) Caloundra City Council, *Master Plan No. 28 (Site and Development Plan - Detailed Planning Area 10 - Land Use Area Residential 1) 2002*.
 - e) Caloundra City Council, Approved Plan Kawana Forest. 24 July, 2006.
3. The covenant places obligations upon the owner to maintain the buffer zone, supporting native flora and prohibits the construction or erection of any buildings and the construction of an access or access way, without written approval from the Council.
4. The proposal is for the shed to be located within the buffer zone. Permission for this is required by the Council.
5. Acquisition of the adjacent farmland by the Council does not automatically remove the covenant across lots 318-333 SP 201541, which includes the subject site.

Reasons for the Decision

1. Evidence was submitted on behalf of the Appellant that the agricultural buffer zone was instigated at the time of the estate development to protect or limit the impact from the agricultural activities on the adjacent farmland, such as weed spraying, on the new development. Further, that such a buffer was now redundant with Council acquisition of the farmland, as other uses, whether for the short or long term, were intended. Council provided a response that continued use of the adjacent farm as an agricultural site, for a period yet to be determined, was an option still being considered.
2. Anecdotal evidence provided and visual inspection of the subject site and surrounding environs provided observations that the Council have applied the conditions of the covenant on an inconsistent basis. Further, that few of the current owners along lots 318-333 SP 201541 are aware of the covenant across their property. However, the covenant still remains a current and applicable planning overlay registered on the title over the site, with conditions required to be adhered to.
3. The proposal, as presented, is narrow in focus in consideration of the required conditions of

the Agricultural Buffer Zone under the Covenant. Consideration should be given to other proposal options such as shed size, the siting of the shed on the allotment, shed orientation at east-west, which may limit incursion into the buffer zone and give a northern aspect, and landscape works including western buffer planting, making the proposal more in-keeping with the purpose and conditions of the covenant.

Dr. Christopher Robertson

Development Tribunal Chair

Date: 29 September 2022

Appeal Rights

Schedule 1, Table 2, item 1 of the *Planning Act 2016* provides that an appeal may be made against a decision of a Tribunal to the Planning and Environment Court, other than a decision under section 252, on the ground of -

- (a) an error or mistake in law on the part of the Tribunal; or
- (b) jurisdictional error.

The appeal must be started within 20 business days after the day notice of the Tribunal decision is given to the party.

The following link outlines the steps required to lodge an appeal with the Court.

<http://www.courts.qld.gov.au/courts/planning-and-environment-court/going-to-planning-and-environment-court/starting-proceedings-in-the-court>

Enquiries

All correspondence should be addressed to:

The Registrar of Development Tribunals
Department of Energy and Public Works
GPO Box 2457
Brisbane QLD 4001

Telephone 1800 804 833

Email: registrar@epw.qld.gov.au